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## 6 USC CHAPTER 1, SUBCHAPTER IV, Part B: U.S. Customs and Border Protection

### From Title 6—DOMESTIC SECURITY

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

SUBCHAPTER IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

## PART B—U.S. CUSTOMS AND BORDER PROTECTION

### CODIFICATION

Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(I), Feb. 24, 2016, 130 Stat. 211, substituted "U.S. Customs and Border Protection" for "United States Customs Service" in part heading.

## §211. Establishment of U.S. Customs and Border Protection; Commissioner, Deputy Commissioner, and operational offices

### (a) In general

There is established in the Department an agency to be known as U.S. Customs and Border Protection.

### (b) Commissioner of U.S. Customs and Border Protection

#### (1) In general

There shall be at the head of U.S. Customs and Border Protection a Commissioner of U.S. Customs and Border Protection (in this section referred to as the "Commissioner").

#### (2) Committee referral

As an exercise of the rulemaking power of the Senate, any nomination for the Commissioner submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance.

### (c) Duties

The Commissioner shall—

- (1) coordinate and integrate the security, trade facilitation, and trade enforcement functions of U.S. Customs and Border Protection;
- (2) ensure the interdiction of persons and goods illegally entering or exiting the United States;
- (3) facilitate and expedite the flow of legitimate travelers and trade;
- (4) direct and administer the commercial operations of U.S. Customs and Border Protection, and the enforcement of the customs and trade laws of the United States;
- (5) detect, respond to, and interdict terrorists, drug smugglers and traffickers, human smugglers and traffickers, and other persons who may undermine the security of the United States, in cases in which such persons are entering, or have recently entered, the United States;
- (6) safeguard the borders of the United States to protect against the entry of dangerous goods;
- (7) ensure the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;
- (8) in coordination with U.S. Immigration and Customs Enforcement and United States Citizenship and Immigration Services, enforce and administer all immigration laws, as such term is defined in paragraph (17) of section 1101(a) of title 8, including—
  - (A) the inspection, processing, and admission of persons who seek to enter or depart the United States; and
  - (B) the detection, interdiction, removal, departure from the United States, short-term detention, and transfer of

persons unlawfully entering, or who have recently unlawfully entered, the United States;

(9) develop and implement screening and targeting capabilities, including the screening, reviewing, identifying, and prioritizing of passengers and cargo across all international modes of transportation, both inbound and outbound;

(10) in coordination with the Secretary, deploy technology to collect the data necessary for the Secretary to administer the biometric entry and exit data system pursuant to section 1365b of title 8;

(11) enforce and administer the laws relating to agricultural import and entry inspection referred to in section 231 of this title;

(12) in coordination with the Under Secretary for Management of the Department, ensure U.S. Customs and Border Protection complies with Federal law, the Federal Acquisition Regulation, and the Department's acquisition management directives for major acquisition programs of U.S. Customs and Border Protection;

(13) ensure that the policies and regulations of U.S. Customs and Border Protection are consistent with the obligations of the United States pursuant to international agreements;

(14) enforce and administer—

(A) the Container Security Initiative program under section 205 of the Security and Accountability for Every Port Act of 2006 (6 U.S.C. 945); and

(B) the Customs–Trade Partnership Against Terrorism program under subtitle B of title II of such Act (6 U.S.C. 961 et seq.);

(15) conduct polygraph examinations in accordance with section 221(1) of this title;

(16) establish the standard operating procedures described in subsection (k);

(17) carry out the training required under subsection (l);

(18) carry out section 218 of this title, relating to the issuance of Asia-Pacific Economic Cooperation Business Travel Cards; and

(19) carry out other duties and powers prescribed by law or delegated by the Secretary.

**(d) Deputy Commissioner**

There shall be in U.S. Customs and Border Protection a Deputy Commissioner who shall assist the Commissioner in the management of U.S. Customs and Border Protection.

**(e) U.S. Border Patrol**

**(1) In general**

There is established in U.S. Customs and Border Protection the U.S. Border Patrol.

**(2) Chief**

There shall be at the head of the U.S. Border Patrol a Chief, who shall—

(A) be at the level of Executive Assistant Commissioner within U.S. Customs and Border Protection; and

(B) report to the Commissioner.

**(3) Duties**

The U.S. Border Patrol shall—

(A) serve as the law enforcement office of U.S. Customs and Border Protection with primary responsibility for interdicting persons attempting to illegally enter or exit the United States or goods being illegally imported into or exported from the United States at a place other than a designated port of entry;

(B) deter and prevent the illegal entry of terrorists, terrorist weapons, persons, and contraband; and

(C) carry out other duties and powers prescribed by the Commissioner.

**(f) Air and Marine Operations**

**(1) In general**

There is established in U.S. Customs and Border Protection an office known as Air and Marine Operations.

**(2) Executive Assistant Commissioner**

There shall be at the head of Air and Marine Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

**(3) Duties**

Air and Marine Operations shall—

(A) serve as the law enforcement office within U.S. Customs and Border Protection with primary responsibility to detect, interdict, and prevent acts of terrorism and the unlawful movement of people, illicit drugs, and other contraband

across the borders of the United States in the air and maritime environment;

- (B) conduct joint aviation and marine operations with U.S. Immigration and Customs Enforcement;
- (C) conduct aviation and marine operations with international, Federal, State, and local law enforcement agencies, as appropriate;
- (D) administer the Air and Marine Operations Center established under paragraph (4); and
- (E) carry out other duties and powers prescribed by the Commissioner.

#### **(4) Air and Marine Operations Center**

##### **(A) In general**

There is established in Air and Marine Operations an Air and Marine Operations Center.

##### **(B) Executive Director**

There shall be at the head of the Air and Marine Operations Center an Executive Director, who shall report to the Executive Assistant Commissioner of Air and Marine Operations.

##### **(C) Duties**

The Air and Marine Operations Center shall—

- (i) manage the air and maritime domain awareness of the Department, as directed by the Secretary;
- (ii) monitor and coordinate the airspace for unmanned aerial systems operations of Air and Marine Operations in U.S. Customs and Border Protection;
- (iii) detect, identify, and coordinate a response to threats to national security in the air domain, in coordination with other appropriate agencies, as determined by the Executive Assistant Commissioner;
- (iv) provide aviation and marine support to other Federal, State, tribal, and local agencies; and
- (v) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

#### **(g) Office of Field Operations**

##### **(1) In general**

There is established in U.S. Customs and Border Protection an Office of Field Operations.

##### **(2) Executive Assistant Commissioner**

There shall be at the head of the Office of Field Operations an Executive Assistant Commissioner, who shall report to the Commissioner.

##### **(3) Duties**

The Office of Field Operations shall coordinate the enforcement activities of U.S. Customs and Border Protection at United States air, land, and sea ports of entry to—

- (A) deter and prevent terrorists and terrorist weapons from entering the United States at such ports of entry;
- (B) conduct inspections at such ports of entry to safeguard the United States from terrorism and illegal entry of persons;
- (C) prevent illicit drugs, agricultural pests, and contraband from entering the United States;
- (D) in coordination with the Commissioner, facilitate and expedite the flow of legitimate travelers and trade;
- (E) administer the National Targeting Center established under paragraph (4);
- (F) coordinate with the Executive Assistant Commissioner for the Office of Trade with respect to the trade facilitation and trade enforcement activities of U.S. Customs and Border Protection; and
- (G) carry out other duties and powers prescribed by the Commissioner.

#### **(4) National Targeting Center**

##### **(A) In general**

There is established in the Office of Field Operations a National Targeting Center.

##### **(B) Executive Director**

There shall be at the head of the National Targeting Center an Executive Director, who shall report to the Executive Assistant Commissioner of the Office of Field Operations.

##### **(C) Duties**

The National Targeting Center shall—

- (i) serve as the primary forum for targeting operations within U.S. Customs and Border Protection to collect and analyze traveler and cargo information in advance of arrival in the United States to identify and address security risks and strengthen trade enforcement;

- (ii) identify, review, and target travelers and cargo for examination;
- (iii) coordinate the examination of entry and exit of travelers and cargo;
- (iv) develop and conduct commercial risk assessment targeting with respect to cargo destined for the United States;
- (v) coordinate with the Transportation Security Administration, as appropriate;
- (vi) issue Trade Alerts pursuant to section 4318(b) of title 19; and
- (vii) carry out other duties and powers prescribed by the Executive Assistant Commissioner.

**(5) Annual report on staffing**

**(A) In general**

Not later than 30 days after February 24, 2016, and annually thereafter, the Executive Assistant Commissioner shall submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a report on the staffing model for the Office of Field Operations, including information on how many supervisors, front-line U.S. Customs and Border Protection officers, and support personnel are assigned to each Field Office and port of entry.

**(B) Form**

The report required under subparagraph (A) shall, to the greatest extent practicable, be submitted in unclassified form, but may be submitted in classified form, if the Executive Assistant Commissioner determines that such is appropriate and informs the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate of the reasoning for such.

**(h) Office of Intelligence**

**(1) In general**

There is established in U.S. Customs and Border Protection an Office of Intelligence.

**(2) Assistant Commissioner**

There shall be at the head of the Office of Intelligence an Assistant Commissioner, who shall report to the Commissioner.

**(3) Duties**

The Office of Intelligence shall—

- (A) develop, provide, coordinate, and implement intelligence capabilities into a cohesive intelligence enterprise to support the execution of the duties and responsibilities of U.S. Customs and Border Protection;
- (B) manage the counterintelligence operations of U.S. Customs and Border Protection;
- (C) establish, in coordination with the Chief Intelligence Officer of the Department, as appropriate, intelligence-sharing relationships with Federal, State, local, and tribal agencies and intelligence agencies;
- (D) conduct risk-based covert testing of U.S. Customs and Border Protection operations, including for nuclear and radiological risks; and
- (E) carry out other duties and powers prescribed by the Commissioner.

**(i) Office of International Affairs**

**(1) In general**

There is established in U.S. Customs and Border Protection an Office of International Affairs.

**(2) Assistant Commissioner**

There shall be at the head of the Office of International Affairs an Assistant Commissioner, who shall report to the Commissioner.

**(3) Duties**

The Office of International Affairs, in collaboration with the Office of Policy of the Department, shall—

- (A) coordinate and support U.S. Customs and Border Protection's foreign initiatives, policies, programs, and activities;
- (B) coordinate and support U.S. Customs and Border Protection's personnel stationed abroad;
- (C) maintain partnerships and information-sharing agreements and arrangements with foreign governments, international organizations, and United States agencies in support of U.S. Customs and Border Protection's duties and responsibilities;

- (D) provide necessary capacity building, training, and assistance to foreign customs and border control agencies to strengthen border, global supply chain, and travel security, as appropriate;
- (E) coordinate mission support services to sustain U.S. Customs and Border Protection's global activities;
- (F) coordinate with customs authorities of foreign countries with respect to trade facilitation and trade enforcement;
- (G) coordinate U.S. Customs and Border Protection's engagement in international negotiations;
- (H) advise the Commissioner with respect to matters arising in the World Customs Organization and other international organizations as such matters relate to the policies and procedures of U.S. Customs and Border Protection;
- (I) advise the Commissioner regarding international agreements to which the United States is a party as such agreements relate to the policies and regulations of U.S. Customs and Border Protection; and
- (J) carry out other duties and powers prescribed by the Commissioner.

**(j) Office of Professional Responsibility**

**(1) In general**

There is established in U.S. Customs and Border Protection an Office of Professional Responsibility.

**(2) Assistant Commissioner**

There shall be at the head of the Office of Professional Responsibility an Assistant Commissioner, who shall report to the Commissioner.

**(3) Duties**

The Office of Professional Responsibility shall—

- (A) investigate criminal and administrative matters and misconduct by officers, agents, and other employees of U.S. Customs and Border Protection;
- (B) manage integrity-related programs and policies of U.S. Customs and Border Protection;
- (C) conduct research and analysis regarding misconduct of officers, agents, and other employees of U.S. Customs and Border Protection; and
- (D) carry out other duties and powers prescribed by the Commissioner.

**(k) Standard operating procedures**

**(1) In general**

The Commissioner shall establish—

- (A) standard operating procedures for searching, reviewing, retaining, and sharing information contained in communication, electronic, or digital devices encountered by U.S. Customs and Border Protection personnel at United States ports of entry;
- (B) standard use of force procedures that officers and agents of U.S. Customs and Border Protection may employ in the execution of their duties, including the use of deadly force;
- (C) uniform, standardized, and publicly-available procedures for processing and investigating complaints against officers, agents, and employees of U.S. Customs and Border Protection for violations of professional conduct, including the timely disposition of complaints and a written notification to the complainant of the status or outcome, as appropriate, of the related investigation, in accordance with section 552a of title 5 (commonly referred to as the "Privacy Act" or the "Privacy Act of 1974");
- (D) an internal, uniform reporting mechanism regarding incidents involving the use of deadly force by an officer or agent of U.S. Customs and Border Protection, including an evaluation of the degree to which the procedures required under subparagraph (B) were followed; and
- (E) standard operating procedures, acting through the Executive Assistant Commissioner for Air and Marine Operations and in coordination with the Office for Civil Rights and Civil Liberties and the Office of Privacy of the Department, to provide command, control, communication, surveillance, and reconnaissance assistance through the use of unmanned aerial systems, including the establishment of—
  - (i) a process for other Federal, State, and local law enforcement agencies to submit mission requests;
  - (ii) a formal procedure to determine whether to approve or deny such a mission request;
  - (iii) a formal procedure to determine how such mission requests are prioritized and coordinated; and
  - (iv) a process regarding the protection and privacy of data and images collected by U.S. Customs and Border Protection through the use of unmanned aerial systems.

**(2) Requirements regarding certain notifications**

The standard operating procedures established pursuant to subparagraph (A) of paragraph (1) shall require—

- (A) in the case of a search of information conducted on an electronic device by U.S. Customs and Border Protection

personnel, the Commissioner to notify the individual subject to such search of the purpose and authority for such search, and how such individual may obtain information on reporting concerns about such search; and

(B) in the case of information collected by U.S. Customs and Border Protection through a search of an electronic device, if such information is transmitted to another Federal agency for subject matter assistance, translation, or decryption, the Commissioner to notify the individual subject to such search of such transmission.

### **(3) Exceptions**

The Commissioner may withhold the notifications required under paragraphs (1)(C) and (2) if the Commissioner determines, in the sole and unreviewable discretion of the Commissioner, that such notifications would impair national security, law enforcement, or other operational interests.

### **(4) Update and review**

The Commissioner shall review and update every three years the standard operating procedures required under this subsection.

### **(5) Audits**

The Inspector General of the Department of Homeland Security shall develop and annually administer, during each of the three calendar years beginning in the calendar year that begins after February 24, 2016, an auditing mechanism to review whether searches of electronic devices at or between United States ports of entry are being conducted in conformity with the standard operating procedures required under subparagraph (A) of paragraph (1). Such audits shall be submitted to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and shall include the following:

(A) A description of the activities of officers and agents of U.S. Customs and Border Protection with respect to such searches.

(B) The number of such searches.

(C) The number of instances in which information contained in such devices that were subjected to such searches was retained, copied, shared, or entered in an electronic database.

(D) The number of such devices detained as the result of such searches.

(E) The number of instances in which information collected from such devices was subjected to such searches and was transmitted to another Federal agency, including whether such transmissions resulted in a prosecution or conviction.

### **(6) Requirements regarding other notifications**

The standard use of force procedures established pursuant to subparagraph (B) of paragraph (1) shall require—

(A) in the case of an incident of the use of deadly force by U.S. Customs and Border Protection personnel, the Commissioner to notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Commissioner to provide to such committees a copy of the evaluation pursuant to subparagraph (D) of such paragraph not later than 30 days after completion of such evaluation.

### **(7) Report on unmanned aerial systems**

The Commissioner shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report, for each of the three calendar years beginning in the calendar year that begins after February 24, 2016, that reviews whether the use of unmanned aerial systems is being conducted in conformity with the standard operating procedures required under subparagraph (E) of paragraph (1). Such reports—

(A) shall be submitted with the annual budget of the United States Government submitted by the President under section 1105 of title 31;

(B) may be submitted in classified form if the Commissioner determines that such is appropriate; and

(C) shall include—

(i) a detailed description of how, where, and for how long data and images collected through the use of unmanned aerial systems by U.S. Customs and Border Protection are collected and stored; and

(ii) a list of Federal, State, and local law enforcement agencies that submitted mission requests in the previous year and the disposition of such requests.

### **(I) Training**

The Commissioner shall require all officers and agents of U.S. Customs and Border Protection to participate in a specified amount of continuing education (to be determined by the Commissioner) to maintain an understanding of Federal legal rulings, court decisions, and departmental policies, procedures, and guidelines.

### **(m) Short-term detention standards**

**(1) Access to food and water**

The Commissioner shall make every effort to ensure that adequate access to food and water is provided to an individual apprehended and detained at a United States port of entry or between ports of entry as soon as practicable following the time of such apprehension or during subsequent short-term detention.

**(2) Access to information on detainee rights at border patrol processing centers****(A) In general**

The Commissioner shall ensure that an individual apprehended by a U.S. Border Patrol agent or an Office of Field Operations officer is provided with information concerning such individual's rights, including the right to contact a representative of such individual's government for purposes of United States treaty obligations.

**(B) Form**

The information referred to in subparagraph (A) may be provided either verbally or in writing, and shall be posted in the detention holding cell in which such individual is being held. The information shall be provided in a language understandable to such individual.

**(3) Short-term detention defined**

In this subsection, the term "short-term detention" means detention in a U.S. Customs and Border Protection processing center for 72 hours or less, before repatriation to a country of nationality or last habitual residence.

**(4) Daytime repatriation**

When practicable, repatriations shall be limited to daylight hours and avoid locations that are determined to have high indices of crime and violence.

**(5) Report on procurement process and standards**

Not later than 180 days after February 24, 2016, the Comptroller General of the United States shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the procurement process and standards of entities with which U.S. Customs and Border Protection has contracts for the transportation and detention of individuals apprehended by agents or officers of U.S. Customs and Border Protection. Such report should also consider the operational efficiency of contracting the transportation and detention of such individuals.

**(6) Report on inspections of short-term custody facilities**

The Commissioner shall—

- (A) annually inspect all facilities utilized for short-term detention; and
- (B) make publicly available information collected pursuant to such inspections, including information regarding the requirements under paragraphs (1) and (2) and, where appropriate, issue recommendations to improve the conditions of such facilities.

**(n) Wait times transparency****(1) In general**

The Commissioner shall—

- (A) publish live wait times for travelers entering the United States at the 20 United States airports that support the highest volume of international travel (as determined by available Federal flight data);
- (B) make information about such wait times available to the public in real time through the U.S. Customs and Border Protection website;
- (C) submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate, for each of the five calendar years beginning in the calendar year that begins after February 24, 2016, a report that includes compilations of all such wait times and a ranking of such United States airports by wait times; and
- (D) provide adequate staffing at the U.S. Customs and Border Protection information center to ensure timely access for travelers attempting to submit comments or speak with a representative about their entry experiences.

**(2) Calculation**

The wait times referred to in paragraph (1)(A) shall be determined by calculating the time elapsed between an individual's entry into the U.S. Customs and Border Protection inspection area and such individual's clearance by a U.S. Customs and Border Protection officer.

**(o) Other authorities**

**(1) In general**

The Secretary may establish such other offices or positions of Assistant Commissioners (or other similar officers or officials) as the Secretary determines necessary to carry out the missions, duties, functions, and authorities of U.S. Customs and Border Protection.

**(2) Notification**

If the Secretary exercises the authority provided under paragraph (1), the Secretary shall notify the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate not later than 30 days before exercising such authority.

**(p) Reports to Congress**

The Commissioner shall, on and after February 24, 2016, continue to submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate any report required, on the day before February 24, 2016, to be submitted under any provision of law.

**(q) Other Federal agencies**

Nothing in this section may be construed as affecting in any manner the authority, existing on the day before February 24, 2016, of any other Federal agency or component of the Department.

**(r) Definitions**

In this section, the terms "commercial operations", "customs and trade laws of the United States", "trade enforcement", and "trade facilitation" have the meanings given such terms in section 4301 of title 19.

(Pub. L. 107–296, title IV, §411, Nov. 25, 2002, 116 Stat. 2178; Pub. L. 114–125, title VIII, §802(a), Feb. 24, 2016, 130 Stat. 199; Pub. L. 115–79, §4(a), Nov. 2, 2017, 131 Stat. 1260.)

**REFERENCES IN TEXT**

The Security and Accountability for Every Port Act of 2006, referred to in subsec. (c)(14)(B), is Pub. L. 109–347, Oct. 13, 2006, 120 Stat. 1884, also known as the SAFE Port Act. Subtitle B of title II of the Act is classified generally to part B (§961 et seq.) of subchapter II of chapter 3 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

**CODIFICATION**

Section is comprised of section 411 of Pub. L. 107–296. Former subsec. (b)(2) of section 411 of Pub. L. 107–296 amended section 5314 of Title 5, Government Organization and Employees.

**AMENDMENTS**

**2017**—Subsec. (c)(18), (19). Pub. L. 115–79 added par. (18) and redesignated former par. (18) as (19).

**2016**—Pub. L. 114–125 amended section generally. Prior to amendment, section established the United States Customs Service headed by a Commissioner of Customs.

**CHANGE OF NAME**

Pub. L. 114–125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210, provided that: "On and after the date of the enactment of this Act [Feb. 24, 2016], any reference in law or regulations to the 'Commissioner of Customs' or the 'Commissioner of the Customs Service' shall be deemed to be a reference to the Commissioner of U.S. Customs and Border Protection."

**EFFECTIVE DATE OF 2016 AMENDMENT; CONTINUITY OF FUNCTIONS, RULES, AND ACTIONS**

Pub. L. 114–125, title VIII, §802(b), Feb. 24, 2016, 130 Stat. 209, provided that:

"(1) TREATMENT.—Section 411 of the Homeland Security Act of 2002 [6 U.S.C. 211], as amended by subsection (a) of this section, shall be treated as if included in such Act [Pub. L. 107–296] as of the date of the enactment of such Act [Nov. 25, 2002], and, in addition to the functions, missions, duties, and authorities specified in such amended section 411, U.S. Customs and Border Protection shall continue to perform and carry out the functions, missions, duties, and authorities under section 411 of such Act as in existence on the day before the date of the enactment of this Act [Feb. 24, 2016], and section 415 of the Homeland Security Act of 2002 [6 U.S.C. 215].

"(2) RULES OF CONSTRUCTION.—

"(A) RULES AND REGULATIONS.—Notwithstanding paragraph (1), nothing in this title [see Tables for classification] or any amendment made by this title may be construed as affecting in any manner any rule or regulation issued or promulgated pursuant to any provision of law, including section 411 of the Homeland Security Act of 2002 as in existence on the day before the date of the enactment of this Act [Feb. 24, 2016], and any such rule or regulation shall continue to have full force and effect on and after such date.

"(B) OTHER ACTIONS.—Notwithstanding paragraph (1), nothing in this Act [see Tables for classification] may be construed as affecting in any manner any action, determination, policy, or decision pursuant to section 411 of the Homeland Security Act of 2002 as in existence on the day before the date of the enactment of this Act, and any such action, determination, policy, or decision shall continue to have full force and effect on and after such date."

#### **PORTS OF ENTRY THREAT AND OPERATIONAL REVIEW**

Pub. L. 115–372, Dec. 21, 2018, 132 Stat. 5107, provided that:

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'United States Ports of Entry Threat and Operational Review Act'.

**"SEC. 2. PORTS OF ENTRY THREAT AND OPERATIONAL ANALYSIS.**

**"(a) IN GENERAL.—**

"(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 21, 2018], the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall submit to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a threat and operational analysis of ports of entry.

"(2) CONTENTS.—The threat and operational analysis required under paragraph (1) shall include an assessment of the following:

"(A) Current and potential threats posed by individuals and organized groups seeking—

- "(i) to exploit security vulnerabilities at ports of entry; or
- "(ii) to unlawfully enter the United States through such ports of entry.

"(B) Methods and pathways used to exploit security vulnerabilities at ports of entry.

"(C) Improvements needed at ports of entry to prevent the unlawful movement of people, illicit drugs, and other contraband across the borders of the United States.

"(D) Improvements needed to enhance travel and trade facilitation and reduce wait times at ports of entry, including—

- "(i) security vulnerabilities associated with prolonged wait times;
- "(ii) current technology at ports of entry that can be adapted to handle more volume, increase efficiency, and improve accuracy of detection efforts; and
- "(iii) infrastructure additions and upgrades.

"(E) Processes conducted at ports of entry that do not require law enforcement training and could be—

- "(i) filled with—

"(I) non-law enforcement staff; or

"(II) the private sector, for processes or activities determined to not be inherently governmental (as such term is defined in section 5 of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; [31 U.S.C. 501 note])); or

- "(ii) automated.

"(3) ANALYSIS REQUIREMENTS.—In compiling the threat and operational analysis required under paragraph (1), the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall consider and examine the following:

"(A) Personnel needs, including K–9 Units, and estimated costs, at each port of entry, including such needs and challenges associated with recruitment and hiring.

"(B) Technology needs, including radiation portal monitors and non-intrusive inspection technology, and estimated costs at each port of entry.

"(C) Infrastructure needs and estimated costs at each port of entry.

**"(b) PORTS OF ENTRY STRATEGY AND IMPLEMENTATION PLAN.—**

**"(1) IN GENERAL.**—Not later than 270 days after the submission of the threat and operational analysis required under subsection (a) and every 5 years thereafter for 10 years, the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection (CBP), shall provide to the Committee on Homeland Security and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate a ports of entry strategy and implementation plan.

**"(2) CONTENTS.**—The ports of entry strategy and implementation plan required under paragraph (1) shall include a consideration of the following:

**"(A)** The ports of entry threat and operational analysis required under subsection (a), with an emphasis on efforts to mitigate threats and challenges identified in such analysis.

**"(B)** Efforts to reduce wait times at ports of entry and standards against which the effectiveness of such efforts may be determined.

**"(C)** Efforts to prevent the unlawful movement of people, illicit drugs, and other contraband across the borders of the United States at the earliest possible point at ports of entry and standards against which the effectiveness of such efforts may be determined.

**"(D)** Efforts to focus intelligence collection and information analysis to disrupt transnational criminal organizations attempting to exploit vulnerabilities at ports of entry and standards against which the effectiveness of such efforts may be determined.

**"(E)** Efforts to verify that any new port of entry technology acquisition can be operationally integrated with existing technologies in use by the Department of Homeland Security.

**"(F)** Lessons learned from reports on the business transformation initiative under section 802(i)(1) of the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114–125).

**"(G)** CBP staffing requirements for all ports of entry.

**"(H)** Efforts to identify and detect fraudulent documents at ports of entry and standards against which the effectiveness of such efforts may be determined.

**"(I)** Efforts to prevent, detect, investigate, and mitigate corruption at ports of entry and standards against which the effectiveness of such efforts may be determined.

**"(c) PORTS OF ENTRY DESCRIBED.**—In this section, the term 'ports of entry' means United States air, land, and sea ports of entry."

**REQUIRED NOTICE OF AIRCRAFT TRANSFERS**

Pub. L. 115–141, div. F, title II, §203, Mar. 23, 2018, 132 Stat. 612, provided that: "Hereafter, no U.S. Customs and Border Protection aircraft or other related equipment, with the exception of aircraft that are one of a kind and have been identified as excess to U.S. Customs and Border Protection requirements and aircraft that have been damaged beyond repair, shall be transferred to any other Federal agency, department, or office outside of the Department of Homeland Security without prior notice to the Committees on Appropriations of the Senate and the House of Representatives."

**DETECTING INCOMING CONTRABAND WITH TECHNOLOGY**

Pub. L. 115–112, Jan. 10, 2018, 131 Stat. 2274, provided that:

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology Act' or the 'INTERDICT Act'.

**"SEC. 2. DEFINITIONS.**

"In this Act:

**"(1) CHEMICAL SCREENING DEVICE.**—The term 'chemical screening device' means an immunoassay, narcotics field test kit, infrared spectrophotometer, mass spectrometer, nuclear magnetic resonance spectrometer, Raman spectrophotometer, or other scientific instrumentation able to collect data that can be interpreted to determine the presence of fentanyl, other synthetic opioids, and other narcotics and psychoactive substances.

**"(2) COMMISSIONER.**—The term 'Commissioner' means the Commissioner of U.S. Customs and Border

Protection.

"(3) EXPRESS CONSIGNMENT OPERATOR OR CARRIER.—The term 'express consignment operator or carrier' has the meaning given that term in section 128.1 of title 19, Code of Federal Regulations (or any similar successor regulation).

**"SEC. 3. INTERDICTION OF FENTANYL, OTHER SYNTHETIC OPIOIDS, AND OTHER NARCOTICS AND PSYCHOACTIVE SUBSTANCES.**

"(a) CHEMICAL SCREENING DEVICES.—The Commissioner shall—

"(1) increase the number of chemical screening devices available to U.S. Customs and Border Protection officers over the number of such devices that are available on the date of the enactment of this Act [Jan. 10, 2018]; and

"(2) make such additional chemical screening devices available to U.S. Customs and Border Protection officers as the Commissioner determines are necessary to interdict fentanyl, other synthetic opioids, and other narcotics and psychoactive substances that are illegally imported into the United States, including such substances that are imported through the mail or by an express consignment operator or carrier.

"(b) PERSONNEL TO INTERPRET DATA.—The Commissioner shall dedicate the appropriate number of U.S. Customs and Border Protection personnel, including scientists, so that such personnel are available during all operational hours to interpret data collected by chemical screening devices.

**"SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

"There is authorized to be appropriated to the Commissioner \$9,000,000 to ensure that U.S. Customs and Border Protection has resources, including chemical screening devices, personnel, and scientists, available during all operational hours to prevent, detect, and interdict the unlawful importation of fentanyl, other synthetic opioids, and other narcotics and psychoactive substances."

**CONTINUATION IN OFFICE**

Pub. L. 114–125, title VIII, §802(c), Feb. 24, 2016, 130 Stat. 210, provided that:

"(1) COMMISSIONER.—The individual serving as the Commissioner of Customs on the day before the date of the enactment of this Act [Feb. 24, 2016] may serve as the Commissioner of U.S. Customs and Border Protection on and after such date of enactment until a Commissioner of U.S. Customs and Border Protection is appointed under section 411 of the Homeland Security Act of 2002 [6 U.S.C. 211], as amended by subsection (a) of this section.

"(2) OTHER POSITIONS.—The individual serving as Deputy Commissioner, and the individuals serving as Assistant Commissioners and other officers and officials, under section 411 of the Homeland Security Act of 2002 on the day before the date of the enactment of this Act [Feb. 24, 2016] may serve as the Executive Assistant Commissioners, Deputy Commissioner, Assistant Commissioners, and other officers and officials, as appropriate, under such section 411 as amended by subsection (a) of this section unless the Commissioner of U.S. Customs and Border Protection determines that another individual should hold such position or positions."

**BORDER JOBS FOR VETERANS**

Pub. L. 114–68, Oct. 16, 2015, 129 Stat. 555, provided that:

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'Border Jobs for Veterans Act of 2015'.

**"SEC. 2. FINDINGS.**

"Congress finds the following:

"(1) Customs and Border Protection officers at United States ports of entry carry out critical law enforcement duties associated with screening foreign visitors, returning United States citizens, and imported cargo entering the United States.

"(2) It is in the national interest for United States ports of entry to be adequately staffed with Customs and Border Protection officers in a timely fashion, including meeting the congressionally funded staffing target of 23,775 officers for fiscal year 2015.

"(3) An estimated 250,000 to 300,000 members of the Armed Forces separate from military service every year.

"(4) Recruiting efforts and expedited hiring procedures must be enhanced to ensure that individuals separating from military service are aware of, and partake in, opportunities to fill vacant Customs and Border Protection officer positions.

"SEC. 3. EXPEDITED HIRING OF APPROPRIATE SEPARATING SERVICE MEMBERS.

"The Secretary of Homeland Security shall consider the expedited hiring of qualified candidates who have the ability to perform the essential functions of the position of a Customs and Border Protection officer and who are eligible for a veterans recruitment appointment authorized under section 4214 of title 38, United States Code.

"SEC. 4. ENHANCEMENTS TO EXISTING PROGRAMS TO RECRUIT SERVICE MEMBERS SEPARATING FROM MILITARY SERVICE FOR CUSTOMS AND BORDER PROTECTION OFFICER VACANCIES.

"(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Defense, and acting through existing programs, authorities, and agreements, where applicable, shall enhance the efforts of the Department of Homeland Security to recruit members of the Armed Forces who are separating from military service to serve as Customs and Border Protection officers.

"(b) ELEMENTS.—The enhanced recruiting efforts under subsection (a) shall—

"(1) include Customs and Border Protection officer opportunities in relevant job assistance efforts under the Transition Assistance Program;

"(2) place U.S. Customs and Border Protection officials or other relevant Department of Homeland Security officials at recruiting events and jobs fairs involving members of the Armed Forces who are separating from military service;

"(3) provide opportunities for local U.S. Customs and Border Protection field offices to partner with military bases in the region;

"(4) include outreach efforts to educate members of the Armed Forces with Military Occupational Specialty Codes and Officer Branches, Air Force Specialty Codes, Naval Enlisted Classifications and Officer Designators, and Coast Guard competencies that are transferable to the requirements, qualifications, and duties assigned to Customs and Border Protection officers of available hiring opportunities to become Customs and Border Protection officers;

"(5) identify shared activities and opportunities for reciprocity related to steps in hiring Customs and Border Protection officers with the goal of minimizing the time required to hire qualified applicants;

"(6) ensure the streamlined interagency transfer of relevant background investigations and security clearances; and

"(7) include such other elements as may be necessary to ensure that members of the Armed Forces who are separating from military service are aware of opportunities to fill vacant Customs and Border Protection officer positions.

"SEC. 5. REPORT TO CONGRESS.

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 16, 2015], and by December 31 of each of the next 3 years thereafter, the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report to the Committee on Homeland Security and the Committee on Armed Services of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate that includes a description and assessment of the efforts of the Department of Homeland Security to hire members of the Armed Forces who are separating from military service as Customs and Border Protection officers under section 4.

"(b) CONTENT.—The report required under subsection (a) shall include—

"(1) a detailed description of the efforts to implement section 4, including—

"(A) elements of the enhanced recruiting efforts and the goals associated with such elements; and

"(B) a description of how the elements and goals referred to in subparagraph (A) will assist in meeting statutorily mandated staffing levels and agency hiring benchmarks;

"(2) a detailed description of the efforts that have been undertaken under section 4;

"(3) the estimated number of separating service members made aware of Customs and Border Protection officer vacancies;

"(4) the number of Customs and Border Protection officer vacancies filled with separating service members; and

"(5) the number of Customs and Border Protection officer vacancies filled with separating service members under Veterans Recruitment Appointment authorized under section 4214 of title 38, United States Code.

#### **"SEC. 6. RULES OF CONSTRUCTION."**

"Nothing in this Act may be construed—

"(1) as superseding, altering, or amending existing Federal veterans' hiring preferences or Federal hiring authorities; or

"(2) to authorize the appropriation of additional amounts to carry out this Act."

#### **PORT OF ENTRY PARTNERSHIP PILOT PROGRAM**

Pub. L. 113–76, div. F, title V, §559, Jan. 17, 2014, 128 Stat. 279, as amended by Pub. L. 114–4, title V, §552(a), Mar. 4, 2015, 129 Stat. 71; Pub. L. 114–113, div. F, title V, §550, Dec. 18, 2015, 129 Stat. 2519, which established a pilot program to permit U.S. Customs and Border Protection to enter into partnerships with private sector and government entities at ports of entry for certain services and to accept certain donations, was repealed by Pub. L. 114–279, §4(b), Dec. 16, 2016, 130 Stat. 1422.

#### **REDUCING PASSENGER PROCESSING TIMES**

Pub. L. 113–76, div. F, title V, §571, Jan. 17, 2014, 128 Stat. 287, provided that:

"(a) The Commissioner of U.S. Customs and Border Protection shall develop metrics that support a goal of reducing passenger processing times at air, land, and sea ports of entry, taking into consideration the capacity of an air or land port's physical infrastructure, airline arrival schedules, peak processing periods, and security requirements.

"(b) Not later than 240 days after the date of enactment of this Act [Jan. 17, 2014], the Commissioner of U.S. Customs and Border Protection shall develop and implement operational work plans to meet the goals of subsection (a) at United States air, land, and sea ports with the highest passenger volume and longest wait times. In developing such plans, the Commissioner of U.S. Customs and Border Protection shall consult with appropriate stakeholders, including, but not limited to, airlines and airport operators, port authorities, and importers."

## **§212. Retention of Customs revenue functions by Secretary of the Treasury**

### **(a) Retention of Customs revenue functions by Secretary of the Treasury**

#### **(1) Retention of authority**

Notwithstanding section 203(a)(1)<sup>1</sup> of this title, authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this chapter under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this chapter, and on and after the effective date of this chapter, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

#### **(2) Statutes**

The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930 [19 U.S.C. 1202 et seq.]; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign

Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974 [19 U.S.C. 2101 et seq.]; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.]; the Andean Trade Preference Act [19 U.S.C. 3201 et seq.]; the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.]; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

## **(b) Maintenance of Customs revenue functions**

### **(1) Maintenance of functions**

Notwithstanding any other provision of this chapter, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by U.S. Customs and Border Protection (as established under section 211 of this title) on or after the effective date of this chapter, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

### **(2) Functions**

The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of U.S. Customs and Border Protection on the day before the effective date of this chapter: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

## **(c) New personnel**

The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

(Pub. L. 107–296, title IV, §412, Nov. 25, 2002, 116 Stat. 2179; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(II), Feb. 24, 2016, 130 Stat. 211.)

### **REFERENCES IN TEXT**

The effective date of this chapter, referred to in subsecs. (a)(1) and (b), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

This chapter, referred to in subsecs. (a)(1) and (b)(1), was in the original "this Act", meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

The Tariff Act of 1930, referred to in subsec. (a)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Foreign Trade Zones Act, referred to in subsec. (a)(2), is act June 18, 1934, ch. 590, 48 Stat. 998, as amended, which is classified generally to chapter 1A (§81a et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Tables.

The Trade Act of 1974, referred to in subsec. (a)(2), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§2101 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

The Trade Agreements Act of 1979, referred to in subsec. (a)(2), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

The North American Free Trade Area Implementation Act, referred to in subsec. (a)(2), probably means the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 19, Customs Duties, and Tables.

The Uruguay Round Agreements Act, referred to in subsec. (a)(2), is Pub. L. 103–465, Dec. 8, 1994, 108 Stat. 4809, as amended. For complete classification of this Act to the Code, see Short Title note set out under section

### 3501 of Title 19, Customs Duties, and Tables.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (a)(2), is title II of [Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384](#), as amended, which is classified principally to chapter 15 (§2701 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The Andean Trade Preference Act, referred to in subsec. (a)(2), is title II of [Pub. L. 102–182, Dec. 4, 1991, 105 Stat. 1236](#), as amended, which is classified generally to chapter 20 (§3201 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 19 and Tables.

The African Growth and Opportunity Act, referred to in subsec. (a)(2), is title I of [Pub. L. 106–200, May 18, 2000, 114 Stat. 252](#), as amended, which is classified principally to chapter 23 (§3701 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 19 and Tables.

#### **AMENDMENTS**

**2016**—Subsec. (b). Pub. L. 114–125 substituted "U.S. Customs and Border Protection" for "the United States Customs Service" in pars. (1) and (2).

<sup>1</sup> *So in original. Probably should be section "203(1)".*

## §213. Preservation of Customs funds

Notwithstanding any other provision of this chapter, no funds collected under paragraphs (1) through (8) of section 58c(a) of title 19 may be transferred for use by any other agency or office in the Department.

(Pub. L. 107–296, title IV, §413, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(III), Feb. 24, 2016, 130 Stat. 211.)

#### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning [Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135](#), known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

#### **AMENDMENTS**

**2016**—Pub. L. 114–125 struck out "available to the United States Customs Service or" after "no funds".

## §214. Separate budget request for Customs

The President shall include in each budget transmitted to Congress under section 1105 of title 31 a separate budget request for U.S. Customs and Border Protection.

(Pub. L. 107–296, title IV, §414, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(IV), Feb. 24, 2016, 130 Stat. 211.)

#### **AMENDMENTS**

**2016**—Pub. L. 114–125 substituted "U.S. Customs and Border Protection" for "the United States Customs Service".

#### **LAND BORDER PROJECTS**

[Pub. L. 112–74, div. D, title II, Dec. 23, 2011, 125 Stat. 949](#), provided in part: "That for fiscal year 2012 and thereafter, the annual budget submission of U.S. Customs and Border Protection for 'Construction and Facilities Management' shall, in consultation with the General Services Administration, include a detailed 5-year plan for all Federal land border port of entry projects with a yearly update of total projected future funding needs delineated by land port of entry".

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111–83, title II, Oct. 28, 2009, 123 Stat. 2148.

Pub. L. 110–329, div. D, title II, Sept. 30, 2008, 122 Stat. 3658.

## §215. Definition

In this part, the term "customs revenue function" means the following:

- (1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.
- (2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.
- (3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.
- (4) Enforcing section 1337 of title 19 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.
- (5) Collecting accurate import data for compilation of international trade statistics.
- (6) Enforcing reciprocal trade agreements.
- (7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this chapter, and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.
- (8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this chapter, and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

(Pub. L. 107–296, title IV, §415, Nov. 25, 2002, 116 Stat. 2180; Pub. L. 114–125, title VIII, §802(g)(1)(B)(iii)(V), Feb. 24, 2016, 130 Stat. 211.)

### REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle B (§§411–419) of title IV of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2178, which enacted this part, amended section 5314 of Title 5, Government Organization and Employees, section 58c of Title 19, Customs Duties, and provisions set out as a note under section 2075 of Title 19. For complete classification of subtitle B to the Code, see Tables.

The effective date of this chapter, referred to in pars. (7) and (8), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

The effective date of the U.S. Customs and Border Protection Authorization Act, referred to in pars. (7) and (8), is the effective date of title VIII of Pub. L. 114–125, which is Feb. 24, 2016.

### AMENDMENTS

**2016**—Pars. (7), (8). Pub. L. 114–125 inserted ", and of U.S. Customs and Border Protection on the day before the effective date of the U.S. Customs and Border Protection Authorization Act" before the colon.

## §216. Repealed. Pub. L. 114–125, title VIII, §802(f), Feb. 24, 2016, 130 Stat. 210

Section, Pub. L. 107–296, title IV, §416, Nov. 25, 2002, 116 Stat. 2181, related to GAO report to Congress.

## §217. Allocation of resources by the Secretary

### (a) In general

The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided

on the day before the effective date of this chapter shall continue to be provided.

**(b) Notification of Congress**

The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

- (1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;
- (2) eliminate or relocate any office of the Department which provides customs revenue services; or
- (3) eliminate any port of entry.

**(c) Definition**

In this section, the term "customs revenue services" means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 215 of this title.

(Pub. L. 107–296, title IV, §417, Nov. 25, 2002, 116 Stat. 2181.)

**REFERENCES IN TEXT**

The effective date of this chapter, referred to in subsec. (a), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

## §218. Asia-Pacific Economic Cooperation Business Travel Cards

**(a) In general**

The Commissioner of U.S. Customs and Border Protection is authorized to issue an Asia-Pacific Economic Cooperation Business Travel Card (referred to in this section as an "ABT Card") to any individual described in subsection (b).

**(b) Card issuance**

An individual described in this subsection is an individual who—

- (1) is a citizen of the United States;
- (2) has been approved and is in good standing in an existing international trusted traveler program of the Department; and
- (3) is—
  - (A) engaged in business in the Asia-Pacific region, as determined by the Commissioner of U.S. Customs and Border Protection; or
  - (B) a United States Government official actively engaged in Asia-Pacific Economic Cooperation business, as determined by the Commissioner of U.S. Customs and Border Protection.

**(c) Integration with existing travel programs**

The Commissioner of U.S. Customs and Border Protection shall integrate application procedures for, and issuance, renewal, and revocation of, ABT Cards with existing international trusted traveler programs of the Department.

**(d) Cooperation with private entities and nongovernmental organizations**

In carrying out this section, the Commissioner of U.S. Customs and Border Protection may consult with appropriate private sector entities and nongovernmental organizations, including academic institutions.

**(e) Fee**

**(1) In general**

The Commissioner of U.S. Customs and Border Protection shall—

- (A) prescribe and collect a fee for the issuance and renewal of ABT Cards; and
- (B) adjust such fee to the extent the Commissioner determines necessary to comply with paragraph (2).

**(2) Limitation**

The Commissioner of U.S. Customs and Border Protection shall ensure that the total amount of the fees collected under paragraph (1) during any fiscal year is sufficient to offset the direct and indirect costs associated with carrying out this section during such fiscal year, including the costs associated with operating and maintaining the ABT Card issuance and renewal processes.

**(3) Account for collections**

There is established in the Treasury of the United States an "Asia-Pacific Economic Cooperation Business Travel Card Account" into which the fees collected under paragraph (1) shall be deposited as offsetting receipts.

**(4) Use of funds**

Amounts deposited into the Asia Pacific<sup>1</sup> Economic Cooperation Business Travel Card Account established under paragraph (3) shall—

- (A) be credited to the appropriate account of the U.S. Customs and Border Protection for expenses incurred in carrying out this section; and
- (B) remain available until expended.

**(f) Notification**

The Commissioner of U.S. Customs and Border Protection shall notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate not later than 60 days after the expenditures of funds to operate and provide ABT Card services beyond the amounts collected under subsection (e)(1).

**(g) Trusted traveler program defined**

In this section, the term "trusted traveler program" means a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States.

(Pub. L. 107–296, title IV, §418, as added Pub. L. 115–79, §2(a), Nov. 2, 2017, 131 Stat. 1258.)

**PRIOR PROVISIONS**

A prior section 218, Pub. L. 107–296, title IV, §418, Nov. 25, 2002, 116 Stat. 2181, related to reports to Congress from the United States Customs Service and the Secretary of the Treasury, prior to repeal by Pub. L. 114–125, title VIII, §802(f), Feb. 24, 2016, 130 Stat. 210.

**TRANSFER OF FUNDS FROM APEC BUSINESS TRAVEL CARD ACCOUNT**

Pub. L. 115–79, §3, Nov. 2, 2017, 131 Stat. 1259, provided that:

"(a) *In General.*—Notwithstanding the repeal of the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 (Public Law 112–54; 8 U.S.C. 1185 note) pursuant to section 4(b)(1), amounts deposited into the APEC Business Travel Card Account established pursuant to such Act as of the date of the enactment of this Act [Nov. 2, 2017] are hereby transferred to the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to section 418(e) of the Homeland Security Act of 2002 [6 U.S.C. 218(e)] (as added by section 2(a) of this Act), and shall be available without regard to whether such amounts are expended in connection with expenses incurred with respect to an ABT Card issued at any time before or after such date of enactment.

"(b) *Availability.*—Amounts deposited in the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to section 418(e) of the Homeland Security Act of 2002, in addition to the purposes for which such amounts are available pursuant to such subsection, shall also be available for expenditure in connection with expenses incurred with respect to ABT Cards issued at any time before the date of the enactment of such section.

"(c) *Termination.*—After the completion of the transfer described in subsection (a), the Asia-Pacific Economic Cooperation Business Travel Card Account established pursuant to the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 shall be closed."

<sup>1</sup> *So in original. Probably should be "Asia-Pacific".*

**§220. Methamphetamine and methamphetamine precursor chemicals****(a) Compliance with performance plan requirements**

As part of the annual performance plan required in the budget submission of the United States Customs and Border Protection under section 1115 of title 31, the Commissioner shall establish performance indicators relating to the seizure of methamphetamine and methamphetamine precursor chemicals in order to evaluate the performance goals of the United States Customs and Border Protection with respect to the interdiction of illegal drugs entering the United States.

**(b) Study and report relating to methamphetamine and methamphetamine precursor chemicals****(1) Analysis**

The Commissioner shall, on an ongoing basis, analyze the movement of methamphetamine and methamphetamine precursor chemicals into the United States. In conducting the analysis, the Commissioner shall—

- (A) consider the entry of methamphetamine and methamphetamine precursor chemicals through ports of entry, between ports of entry, through international mails, and through international courier services;
- (B) examine the export procedures of each foreign country where the shipments of methamphetamine and methamphetamine precursor chemicals originate and determine if changes in the country's customs over time provisions would alleviate the export of methamphetamine and methamphetamine precursor chemicals; and
- (C) identify emerging trends in smuggling techniques and strategies.

## **(2) Report**

Not later than September 30, 2007, and each 2-year period thereafter, the Commissioner, in the consultation with the Attorney General, United States Immigration and Customs Enforcement, the United States Drug Enforcement Administration, and the United States Department of State, shall submit a report to the Committee on Finance of the Senate, the Committee on Foreign Relations of the Senate, the Committee on the Judiciary of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on International Relations of the House of Representatives, and the Committee on the Judiciary of the House of Representatives, that includes—

- (A) a comprehensive summary of the analysis described in paragraph (1); and
- (B) a description of how the Untied<sup>1</sup> States Customs and Border Protection utilized the analysis described in paragraph (1) to target shipments presenting a high risk for smuggling or circumvention of the Combat Methamphetamine Epidemic Act of 2005 (Public Law 109–177).

## **(3) Availability of analysis**

The Commissioner shall ensure that the analysis described in paragraph (1) is made available in a timely manner to the Secretary of State to facilitate the Secretary in fulfilling the Secretary's reporting requirements in section 722 of the Combat Methamphetamine Epidemic Act of 2005.

## **(c) Definition**

In this section, the term "methamphetamine precursor chemicals" means the chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, including each of the salts, optical isomers, and salts of optical isomers of such chemicals.

(Pub. L. 109–347, title VII, §707, Oct. 13, 2006, 120 Stat. 1946.)

### **REFERENCES IN TEXT**

The Combat Methamphetamine Epidemic Act of 2005, referred to in subsec. (b)(2)(B), is Pub. L. 109–177, title VII, Mar. 9, 2006, 120 Stat. 256. Section 722 of the Act amended sections 2291h, 2291j, and 2291j–1 of Title 22, Foreign Relations and Intercourse, and enacted provisions set out as a note under section 2291h of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21, Food and Drugs, and Tables.

### **CODIFICATION**

Section was enacted as part of the Security and Accountability For Every Port Act of 2006, also known as the SAFE Port Act, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

### **CHANGE OF NAME**

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

### **DEFINITIONS**

For definition of "Commissioner" as used in this section, see section 901 of this title.

<sup>1</sup> So in original.

## **§221. Requirements with respect to administering polygraph examinations to law enforcement personnel of U.S. Customs and Border Protection**

### **(a) In general**

The Secretary of Homeland Security shall ensure that—

- (1) by not later than 2 years after January 4, 2011, all applicants for law enforcement positions with U.S. Customs and

Border Protection (except as provided in subsection (b)) receive polygraph examinations before being hired for such a position; and

(2) by not later than 180 days after January 4, 2011, U.S. Customs and Border Protection initiates all periodic background reinvestigations for all law enforcement personnel of U.S. Customs and Border Protection that should receive periodic background reinvestigations pursuant to relevant policies of U.S. Customs and Border Protection in effect on the day before January 4, 2011.

### **(b) Waiver**

The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—

- (1) is deemed suitable for employment;
- (2) holds a current, active Top Secret/Sensitive Compartmented Information Clearance;
- (3) has a current Single Scope Background Investigation;
- (4) was not granted any waivers to obtain his or her clearance; and
- (5) is a veteran (as defined in section 2108 of title 5).

(Pub. L. 111–376, §3, Jan. 4, 2011, 124 Stat. 4104; Pub. L. 114–279, §5, Dec. 16, 2016, 130 Stat. 1422.)

### **CODIFICATION**

Section was enacted as part of the Anti-Border Corruption Act of 2010, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

### **AMENDMENTS**

**2016**—Pub. L. 114–279 designated existing provisions as subsec. (a), inserted heading, in par. (1) inserted " (except as provided in subsection (b))" after "Border Protection", and added subsec. (b).

### **WAIVER OF CERTAIN POLYGRAPH EXAMINATION REQUIREMENTS**

Pub. L. 114–328, div. A, title X, §1049, Dec. 23, 2016, 130 Stat. 2396, provided that: "The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, may waive the polygraph examination requirement under section 3 of the Anti-Border Corruption Act of 2010 (Public Law 111–376) [6 U.S.C. 221] for any applicant who—

- "(1) the Commissioner determines is suitable for employment;
- "(2) holds a current, active Top Secret clearance and is able to access sensitive compartmented information;
- "(3) has a current single scope background investigation;
- "(4) was not granted any waivers to obtain the clearance; and
- "(5) is a veteran (as such term is defined in section 2108 or 2109a [probably should be "2108a"] of title 5, United States Code)."

### **FINDINGS**

Pub. L. 111–376, §2, Jan. 4, 2011, 124 Stat. 4104, provided that: "Congress makes the following findings:

"(1) According to the Office of the Inspector General of the Department of Homeland Security, since 2003, 129 U.S. Customs and Border Protection officials have been arrested on corruption charges and, during 2009, 576 investigations were opened on allegations of improper conduct by U.S. Customs and Border Protection officials.

"(2) To foster integrity in the workplace, established policy of U.S. Customs and Border Protection calls for—

"(A) all job applicants for law enforcement positions at U.S. Customs and Border Protection to receive a polygraph examination and a background investigation before being offered employment; and

"(B) relevant employees to receive a periodic background reinvestigation every 5 years.

"(3) According to the Office of Internal Affairs of U.S. Customs and Border Protection—

"(A) in 2009, less than 15 percent of applicants for jobs with U.S. Customs and Border Protection received polygraph examinations;

"(B) as of March 2010, U.S. Customs and Border Protection had a backlog of approximately 10,000

periodic background reinvestigations of existing employees; and

"(C) without additional resources, by the end of fiscal year 2010, the backlog of periodic background reinvestigations will increase to approximately 19,000."

## §222. Advanced Training Center Revolving Fund

For fiscal year 2012 and thereafter, U.S. Customs and Border Protection's Advanced Training Center is authorized to charge fees for any service and/or thing of value it provides to Federal Government or non-government entities or individuals, so long as the fees charged do not exceed the full costs associated with the service or thing of value provided: *Provided*, That notwithstanding section 3302(b) of title 31, fees collected by the Advanced Training Center are to be deposited into a separate account entitled "Advanced Training Center Revolving Fund", and be available, without further appropriations, for necessary expenses of the Advanced Training Center program, and are to remain available until expended.

(Pub. L. 112-74, div. D, title V, §557, Dec. 23, 2011, 125 Stat. 979.)

### CODIFICATION

Section was enacted as part of the Department of Homeland Security Appropriations Act, 2012, and also as part of the Consolidated Appropriations Act, 2012, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

## §223. Border security metrics

### (a) Definitions

In this section:

#### (1) Appropriate congressional committees

The term "appropriate congressional committees" means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Homeland Security of the House of Representatives.

#### (2) Consequence Delivery System

The term "Consequence Delivery System" means the series of consequences applied by U.S. Border Patrol in collaboration with other Federal agencies to persons unlawfully entering the United States, in order to prevent unlawful border crossing recidivism.

#### (3) Got away

The term "got away" means an unlawful border crosser who—

- (A) is directly or indirectly observed making an unlawful entry into the United States;
- (B) is not apprehended; and
- (C) is not a turn back.

#### (4) Known maritime migrant flow

The term "known maritime migrant flow" means the sum of the number of undocumented migrants—

- (A) interdicted in the waters over which the United States has jurisdiction;
- (B) identified at sea either directly or indirectly, but not interdicted;
- (C) if not described in subparagraph (A) or (B), who were otherwise reported, with a significant degree of certainty, as having entered, or attempted to enter, the United States through the maritime border.

#### (5) Major violator

The term "major violator" means a person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including the following:

- (A) Possession of illicit drugs.
- (B) Smuggling of prohibited products.
- (C) Human smuggling.
- (D) Possession of illegal weapons.
- (E) Use of fraudulent documents.
- (F) Any other offense that is serious enough to result in an arrest.

**(6) Secretary**

The term "the Secretary" means the Secretary of Homeland Security.

**(7) Situational awareness**

The term "situational awareness" means knowledge and understanding of current unlawful cross-border activity, including the following:

- (A) Threats and trends concerning illicit trafficking and unlawful crossings.
- (B) The ability to forecast future shifts in such threats and trends.
- (C) The ability to evaluate such threats and trends at a level sufficient to create actionable plans.
- (D) The operational capability to conduct persistent and integrated surveillance of the international borders of the United States.

**(8) Transit zone**

The term "transit zone" means the sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the United States.

**(9) Turn back**

The term "turn back" means an unlawful border crosser who, after making an unlawful entry into the United States, responds to United States enforcement efforts by returning promptly to the country from which such crosser entered.

**(10) Unlawful border crossing effectiveness rate**

The term "unlawful border crossing effectiveness rate" means the percentage that results from dividing the number of apprehensions and turn backs by the sum of the number of apprehensions, estimated undetected unlawful entries, turn backs, and got aways.

**(11) Unlawful entry**

The term "unlawful entry" means an unlawful border crosser who enters the United States and is not apprehended by a border security component of the Department of Homeland Security.

**(b) Metrics for securing the border between ports of entry****(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

- (A) Estimates, using alternative methodologies where appropriate, including recidivism data, survey data, known-flow data, and technologically-measured data, of the following:
  - (i) The rate of apprehension of attempted unlawful border crossers.
  - (ii) The number of detected unlawful entries.
  - (iii) The number of estimated undetected unlawful entries.
  - (iv) Turn backs.
  - (v) Got aways.
- (B) A measurement of situational awareness achieved in each U.S. Border Patrol sector.
- (C) An unlawful border crossing effectiveness rate in each U.S. Border Patrol sector.
- (D) A probability of detection rate, which compares the estimated total unlawful border crossing attempts not detected by U.S. Border Patrol to the unlawful border crossing effectiveness rate under subparagraph (C), as informed by subparagraph (A).
- (E) The number of apprehensions in each U.S. Border Patrol sector.
- (F) The number of apprehensions of unaccompanied alien children, and the nationality of such children, in each U.S. Border Patrol sector.
- (G) The number of apprehensions of family units, and the nationality of such family units, in each U.S. Border Patrol sector.
- (H) An illicit drugs seizure rate for drugs seized by U.S. Border Patrol between ports of entry, which compares the ratio of the amount and type of illicit drugs seized between ports of entry in any fiscal year to the average of the amount and type of illicit drugs seized between ports of entry in the immediately preceding five fiscal years.
- (I) Estimates of the impact of the Consequence Delivery System on the rate of recidivism of unlawful border crossers over multiple fiscal years.
- (J) An examination of each consequence under the Consequence Delivery System referred to in subparagraph (I),

including the following:

- (i) Voluntary return.
- (ii) Warrant of arrest or notice to appear.
- (iii) Expedited removal.
- (iv) Reinstatement of removal.
- (v) Alien transfer exit program.
- (vi) Criminal consequence program.
- (vii) Standard prosecution.
- (viii) Operation Against Smugglers Initiative on Safety and Security.

## **(2) Metrics consultation**

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

- (A) consult with the heads of the appropriate components of the Department of Homeland Security; and
- (B) where appropriate, with the heads of other agencies, including the Office of Refugee Resettlement of the Department of Health and Human Services and the Executive Office for Immigration Review of the Department of Justice.

## **(3) Manner of collection**

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner across all U.S. Border Patrol sectors, informed by situational awareness.

## **(c) Metrics for securing the border at ports of entry**

### **(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security at ports of entry. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

- (A) Estimates, using alternative methodologies where appropriate, including recidivism data, survey data, and randomized secondary screening data, of the following:
  - (i) Total inadmissible travelers who attempt to, or successfully, enter the United States at a port of entry.
  - (ii) The rate of refusals and interdictions for travelers who attempt to, or successfully, enter the United States at a port of entry.
  - (iii) The number of unlawful entries at a port of entry.
- (B) The amount and type of illicit drugs seized by the Office of Field Operations of U.S. Customs and Border Protection at ports of entry during the previous fiscal year.
- (C) An illicit drugs seizure rate for drugs seized by the Office of Field Operations, which compares the ratio of the amount and type of illicit drugs seized by the Office of Field Operations in any fiscal year to the average of the amount and type of illicit drugs seized by the Office of Field Operations in the immediately preceding five fiscal years.
- (D) The number of infractions related to travelers and cargo committed by major violators who are interdicted by the Office of Field Operations at ports of entry, and the estimated number of such infractions committed by major violators who are not so interdicted.
- (E) In consultation with the heads of the Office of National Drug Control Policy and the United States Southern Command, a cocaine seizure effectiveness rate, which is the percentage resulting from dividing the amount of cocaine seized by the Office of Field Operations by the total estimated cocaine flow rate at ports of entry along the United States land border with Mexico and Canada.
- (F) A measurement of how border security operations affect crossing times, including the following:
  - (i) A wait time ratio that compares the average wait times to total commercial and private vehicular traffic volumes at each land port of entry.
  - (ii) An infrastructure capacity utilization rate that measures traffic volume against the physical and staffing capacity at each land port of entry.
  - (iii) A secondary examination rate that measures the frequency of secondary examinations at each land port of entry.
  - (iv) An enforcement rate that measures the effectiveness of such secondary examinations at detecting major violators.
- (G) A seaport scanning rate that includes the following:
  - (i) The number of all cargo containers that are considered potentially "high-risk", as determined by the Executive

Assistant Commissioner of the Office of Field Operations.

- (ii) A comparison of the number of potentially high-risk cargo containers scanned by the Office of Field Operations at each sea port of entry during a fiscal year to the total number of high-risk cargo containers entering the United States at each such sea port of entry during the previous fiscal year.
- (iii) The number of potentially high-risk cargo containers scanned upon arrival at a United States sea port of entry.
- (iv) The number of potentially high-risk cargo containers scanned before arrival at a United States sea port of entry.

## **(2) Metrics consultation**

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

- (A) consult with the heads of the appropriate components of the Department of Homeland Security; and
- (B) where appropriate, work with heads of other appropriate agencies, including the Office of Refugee Resettlement of the Department of Health and Human Services and the Executive Office for Immigration Review of the Department of Justice.

## **(3) Manner of collection**

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner across all United States ports of entry, informed by situational awareness.

## **(d) Metrics for securing the maritime border**

### **(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of security in the maritime environment. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

- (A) Situational awareness achieved in the maritime environment.
- (B) A known maritime migrant flow rate.
- (C) An illicit drugs removal rate for drugs removed inside and outside of a transit zone, which compares the amount and type of illicit drugs removed, including drugs abandoned at sea, by the maritime security components of the Department of Homeland Security in any fiscal year to the average of the amount and type of illicit drugs removed by such maritime components for the immediately preceding five fiscal years.
- (D) In consultation with the heads of the Office of National Drug Control Policy and the United States Southern Command, a cocaine removal effectiveness rate for cocaine removed inside a transit zone and outside a transit zone, which compares the amount of cocaine removed by the maritime security components of the Department of Homeland Security by the total documented cocaine flow rate, as contained in Federal drug databases.
- (E) A response rate, which compares the ability of the maritime security components of the Department of Homeland Security to respond to and resolve known maritime threats, whether inside or outside a transit zone, by placing assets on-scene, to the total number of events with respect to which the Department has known threat information.
- (F) An intergovernmental response rate, which compares the ability of the maritime security components of the Department of Homeland Security or other United States Government entities to respond to and resolve actionable maritime threats, whether inside or outside a transit zone, with the number of such threats detected.

## **(2) Metrics consultation**

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

- (A) consult with the heads of the appropriate components of the Department of Homeland Security; and
- (B) where appropriate, work with the heads of other agencies, including the Drug Enforcement Agency, the Department of Defense, and the Department of Justice.

## **(3) Manner of collection**

The data used by the Secretary shall be collected and reported in a consistent and standardized manner by the maritime security components of the Department of Homeland Security, informed by situational awareness.

## **(e) Air and Marine security metrics in the land domain**

### **(1) In general**

Not later than 180 days after December 23, 2016, the Secretary shall develop metrics, informed by situational awareness, to measure the effectiveness of the aviation assets and operations of Air and Marine Operations of U.S. Customs and Border Protection. The Secretary shall annually implement the metrics developed under this subsection, which shall include the following:

- (A) A flight hour effectiveness rate, which compares Air and Marine Operations flight hours requirements to the number of flight hours flown by Air and Marine Operations.
- (B) A funded flight hour effectiveness rate, which compares the number of funded flight hours appropriated to Air and Marine Operations to the number of actual flight hours flown by Air and Marine Operations.
- (C) A readiness rate, which compares the number of aviation missions flown by Air and Marine Operations to the number of aviation missions cancelled by Air and Marine Operations due to maintenance, operations, or other causes.
- (D) The number of missions cancelled by Air and Marine Operations due to weather compared to the total planned missions.
- (E) The number of individuals detected by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.
- (F) The number of apprehensions assisted by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.
- (G) The number and quantity of illicit drug seizures assisted by Air and Marine Operations through the use of unmanned aerial systems and manned aircraft.
- (H) The number of times that actionable intelligence related to border security was obtained through the use of unmanned aerial systems and manned aircraft.

## **(2) Metrics consultation**

To ensure that authoritative data sources are utilized in the development of the metrics described in paragraph (1), the Secretary shall—

- (A) consult with the heads of the appropriate components of the Department of Homeland Security; and
- (B) as appropriate, work with the heads of other departments and agencies, including the Department of Justice.

## **(3) Manner of collection**

The data collected to inform the metrics developed in accordance with paragraph (1) shall be collected and reported in a consistent and standardized manner by Air and Marine Operations, informed by situational awareness.

## **(f) Data transparency**

The Secretary shall—

- (1) in accordance with applicable privacy laws, make data related to apprehensions, inadmissible aliens, drug seizures, and other enforcement actions available to the public, law enforcement communities, and academic research communities; and
- (2) provide the Office of Immigration Statistics of the Department of Homeland Security with unfettered access to the data referred to in paragraph (1).

## **(g) Evaluation by the Government Accountability Office and the Secretary**

### **(1) Metrics report**

#### **(A) Mandatory disclosures**

The Secretary shall submit to the appropriate congressional committees and the Comptroller General of the United States an annual report containing the metrics required under this section and the data and methodology used to develop such metrics.

#### **(B) Permissible disclosures**

The Secretary, for the purpose of validation and verification, may submit the annual report described in subparagraph (A) to—

- (i) the Center for Borders, Trade, and Immigration Research of the Centers of Excellence network of the Department of Homeland Security;
- (ii) the head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security; and
- (iii) a Federally Funded Research and Development Center.

### **(2) GAO report**

Not later than 270 days after receiving the first report under paragraph (1)(A) and biennially thereafter for the following ten years with respect to every other such report, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that—

- (A) analyzes the suitability and statistical validity of the data and methodology contained in each such report; and
- (B) includes recommendations on—
  - (i) the feasibility of other suitable metrics that may be used to measure the effectiveness of border security; and
  - (ii) improvements that need to be made to the metrics being used to measure the effectiveness of border security.

**(3) State of the Border report**

Not later than 60 days after the end of each fiscal year through fiscal year 2026, the Secretary shall submit to the appropriate congressional committees a "State of the Border" report that—

- (A) provides trends for each metric under this section for the last ten fiscal years, to the greatest extent possible;
- (B) provides selected analysis into related aspects of illegal flow rates, including undocumented migrant flows and stock estimation techniques;
- (C) provides selected analysis into related aspects of legal flow rates; and
- (D) includes any other information that the Secretary determines appropriate.

**(4) Metrics update**

**(A) In general**

After submitting the tenth report to the Comptroller General under paragraph (1), the Secretary may reevaluate and update any of the metrics developed in accordance with this section to ensure that such metrics are suitable to measure the effectiveness of border security.

**(B) Congressional notification**

Not later than 30 days before updating the metrics pursuant to subparagraph (A), the Secretary shall notify the appropriate congressional committees of such updates.

(Pub. L. 114–328, div. A, title X, §1092, Dec. 23, 2016, 130 Stat. 2429.)

**CODIFICATION**

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2017, and not as part of the Homeland Security Act of 2002 which comprises this chapter.